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742-852—64——1

# In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 287

PEOPLE'S EDUCATIONAL CAMP SOCIETY, INC.,
PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 4a–33a)[1] are reported at 39 T.C. 756. The opinion of the Court of Appeals (Pet. App. 1–34) is reported at 331 F. 2d 923.

### JURISDICTION

The judgment of the Court of Appeals was entered on April 24, 1964. (Pet. App. 35.) The petition for a writ of certiorari was filed on July 16, 1964. The

[1] "R." references are to the separately bound Appendix to petitioner's brief in the Court of Appeals for the Second Circuit. "Supp. R." references are to the Appendix to Respondent's brief in the Court of Appeals for the Second Circuit.

jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

## QUESTION PRESENTED

Whether the two courts below were correct in finding that taxpayer's primary purpose was the operation of a commercial resort-hotel and in holding that taxpayer was therefore not entitled to an exemption from income tax as an organization "operated exclusively for the promotion of social welfare" within the purview of Section 501(c)(4) of the Internal Revenue Code of 1954.

## STATUTE INVOLVED

Internal Revenue Code of 1954 (26 U.S.C. 1958 ed.):

> SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.
>
> (a) *Exemption From Taxation.*—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.
>
> * * * * *
>
> (c) *List of Exempt Organizations.*—The following organizations are referred to in subsection (a):
>
> * * * * *
>
> (4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and

the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

* * * * *

STATEMENT

People's Educational Camp Society, Inc. (hereinafter referred to as taxpayer) is a New York membership society with its principal office in New York City. (R. 5a, 7a.) None of taxpayer's officers or directors receive any salary or other compensation for their services. The day-to-day operations of taxpayer are conducted by a managing director and associate director who are salaried employees hired by the board of five directors. (R. 8a.)

The motivating force behind taxpayer's organization in 1920 came from the American Socialist Society and its affiliate, the Rand School of Social Science, which then conducted adult classes on the labor movement and socialist principles. Taxpayer was formed to own and operate Camp Tamiment, in the Pocono Mountains, as a resort where faculty and friends of the Rand School might gather in the summer. (R. 6a.) During the twenty-year period that followed the camp's opening in 1921 it experienced a steady though moderate growth and by 1941 taxpayer's total fixed assets were $398,663.93. After 1942 the guest-occupancy at Tamiment began to increase more substantially, until by the taxable year 1956, the year here involved, Camp Tamiment had become the largest and one of the most modern summer vacation resorts in Pennsylvania. (R. 10a, 12a.)

It is open to the general public, charges its guests substantial rates, and operates competitively with numerous other mountain resorts in the same area. (R. 12a.) In 1956 taxpayer had assets totaling $2,301,604.74 and gross revenue totaling $942,612.55. (R. 11a, 16a.)

Paralleling the taxpayer's growth during this latter period had been the decline of the American Socialist Society and the Rand School of Social Science; by 1956 neither of these organizations was in existence. (R. 12a.) In 1951 taxpayer acquired from the American Socialist Society its land and building in New York City, which housed the Rand School of Social Science, the School's library, the offices of the New Leader Magazine (published by a separate corporation), and the principal corporate office of taxpayer. (R. 15a.) In March of 1956, the American Socialist Society was dissolved, and all the remaining property of the Society was transferred to the taxpayer. (R. 15a.)

Until 1956 taxpayer was accorded an exemption from the federal income tax as an organization operated exclusively for the promotion of social welfare. In 1956 the Commissioner revoked two previous rulings and ruled that taxpayer's primary purpose was the operation of a summer resort and that it was no longer entitled to an exemption. (R. 22a–23a.)

Taxpayer's operations during that year were extensive. In order to facilitate analysis the two courts below segregated taxpayer's facilities and activities into two categories, those that took place primarily in New York and those that occurred at Camp Tami-

ment. (R. 12a, 15a.) Only in regard to the New York activities did the courts conclude that taxpayer's operation related in general to the promotion of the social welfare. (R. 15a.)

Taxpayer's principal facility in New York was the building it acquired from the American Socialist Society which housed offices and the Rand School library. (R. 15a.) Subsequent to its acquisition taxpayer has renovated and maintained the library, employed a librarian and other employees, and made the facilities available to persons engaged in research. (R. 15a.) In addition, taxpayer has sponsored and promoted in New York an annual music composition contest; an essay contest; an annual book award luncheon; and an annual public forum conducted by a panel of prominent citizens. It has also aided the publication of pamphlets on matters of public interest and has placed public service advertisements in magazines. In addition seminars are held at Camp Tamiment each year before the opening of the resort's summer season.[2] (R. 15a–16a.) Taxpayer's total expenditures for these activities during 1956 amounted to $44,684.76. (R. 16a.)

The principal facilities and expenditures of taxpayer were not in New York but at Camp Tamiment. (R. 12a.) The main living accommodations for guests at the camp consisted of more than 160 attractively furnished cottages that accommodated 900 guests.

[2] Although these seminars used the facilities of Camp Tamiment, for purposes of convenience in designation they will be referred to as part of taxpayer's "New York activities" wherever that phrase is used in this brief.

These were located adjacent to a central dining hall sufficiently large to provide meals for 1,000 people at one sitting. (R. 13a.) Other physical facilities included an administration building; a library; a lecture and concert hall; a large ballroom building; taverns; a clubhouse and dining terrace overlooking the lake; an 18 hole golf course; another large clubhouse overlooking the golf course, which contained a cocktail lounge; a theater building with substantial seating capacity; 18 tennis courts; a beach house on the lake where facilities for swimming and fishing were available; and more than 100 canoes and rowboats. During the peak season approximately 400 employees were engaged in maintaining and operating the above-mentioned facilities. (R. 13a.)

The rates for guests ranged from $12 to $19 per day per person or from $70 to $115 per week per person. (R. 12a.) These rates, based on the American plan, covered room, meals, concerts, lectures, and the use of all athletic facilities (except for green fees at the golf course). (R. 12a.) In addition, Tamiment offered organized programs for guests who were interested in the theater, music and art. On each weekend there was a play, musical comedy, or revue. There was also a 14 to 16 piece orchestra which provided nightly music for dancing and for the comedies and revues. (R. 13a–14a.) On one evening each week a lecture was presented, usually by an author or a specialist on some subject of general interest. Courses in art instruction were offered and various professional artists were invited to display and offer their works for sale. Once a week throughout the summer season, concerts

or recitals by vocalists, pianists, and others were offered for the guests. The taxpayer also provided an annual four-day chamber music festival which was held during the opening of the resort's summer season. (R. 14a.)

The bulk of taxpayer's revenue during the year 1956 ($942,612.55) was derived from the operation of Camp Tamiment and the bulk of its expenditures ($853,107.36 operating expenses and $221,302.34 capital additions) was in connection with the facilities and programs offered there. (16a, 17a.)

Based on this evidence both courts below reached the conclusion that by 1956 taxpayer's primary and dominant purpose had become the operation of a commercial resort. (Pet. App. 18–19, R. 24a.)[3]

## ARGUMENT

Both the Court of Appeals for the Second Circuit and the Tax Court found on the facts presented that taxpayer's dominant purpose was the operation of a commercial summer resort in the Pocono Mountains of Pennsylvania. Under the statute and decisions of this and other courts, this finding, which is clearly supported by the evidence, precludes exemption from tax. There is no conflict of decisions or other occasion for review by this Court.

1. The Internal Revenue laws have never provided that an organization is exempt from taxation merely because its revenue does not inure to the benefit of any private individual; it must also have a purpose

[3] Judge Hays dissented from this finding in the Court of Appeals. (Pet. App. 27–34.)

specified by Congress as meriting exemption from taxation. This case involves Section 501(c)(4) of the Internal Revenue Code of 1954, and taxpayer's claim that it is entitled to the exemption there accorded to "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare * * *."

Taxpayer's petition to this Court is predicated solely on its contention that it is an organization "operated exclusively for the promotion of social welfare" because it uses a portion of the earnings from its nonexempt operation (Camp Tamiment) for activities that admittedly promote the social welfare (taxpayer's New York activities).[4] Thus, since taxpayer is nonprofit, it argues that its Tamiment operation should be ignored because its earnings that are not reinvested or otherwise devoted to Camp Tamiment are used to promote the social welfare. However, both courts below, after a careful analysis of taxpayer's total activities, concluded that taxpayer's primary purpose had become the operation of a commercial resort, which was not entitled to an exemption. (Pet. App. 18–19, 20; R. 24a.)

The courts below applied the established legal criteria in assessing taxpayer's right to an exemption predicated on its New York activities; their findings are supported by the facts. The nature and

[4] In the courts below taxpayer also contended that the operation of Camp Tamiment in itself promoted the social welfare. However, both courts found that the cultural and intellectual activities offered at the camp upon which taxpayer predicated its claim were simply necessary features of a luxury vacation spot catering to a young adult clientele.

extent of taxpayer's commercial operation; the disparity between the large earnings of Camp Tamiment and the amounts devoted each year to the promotion of social welfare; the large surpluses; and the progressive expansion of the physical facilities at the camp all demonstrate that in the year 1956 taxpayer's primary and dominant purpose was not one to which Congress had accorded an exemption from tax in Section 501 (c)(4).

2. The decisions below are not, as taxpayer contends, in conflict with *Trinidad* v. *Sagrada Orden*, 263 U.S. 578. That case simply provided the original basis for the rule, referred to as the "destination test", that the word "exclusively" in the exemption statute will not disqualify organizations whose primary purpose is exempt simply because they engage in some incidental non-exempt activities. In that case an exempt religious organization undertook as a minor part of its activities to sell wine and chocolate to its member churches, from which activities it received a trivial amount of income. In holding that the organization did not lose its exemption, this Court (p. 581) used the language quoted by taxpayer (Pet. 16) suggesting that the exemption depended not on the "source of the income", but rather upon its "destination." However the Court immediately thereafter noted (p. 581) that such "limited trading, if it can be called such, is purely *incidental* to the pursuit of those [religious] purposes and is in no sense a distinct or external venture." (Emphasis added.)

In formulating its opinion, this Court was careful to distinguish between the passive holding of

income producing property and the active conduct of a trade or business. It noted that the bulk of the taxpayer's income came from rents, dividends, and interest, and held that, in using income from its investments, the organization was advancing its religious purposes "not stepping aside from them or engaging in a business pursuit." The Court then turned to consider whether the transactions in wine and chocolate exhibited a different purpose which would destroy the exemption. The crux of that holding was (p. 582):

> As respects the transactions in wine, chocolate and other articles, we think they do not amount to engaging in trade in any proper sense of the term. It is not claimed that there is any selling to the public or in competition with others. The articles are merely bought and supplied for use within the plaintiff's own organization and agencies, —some of them for strictly religious use and the others for uses which are purely incidental to the work which the plaintiff is carrying on. That the transactions yield some profit is in the circumstances a negligible factor. Financial gain is not the end to which they are directed.

The very reasons which impelled this Court in *Sagrada Orden* to hold that the organization there involved was exempt—the incidental nature of the commercial activities—compels the opposite conclusion here where the primary and dominant purpose of the organization is a nonexempt commercial purpose.

3. Taxpayer does not claim that the decisions below are in direct conflict with any other decisions. Although taxpayer has cited a number of cases and suggests there is a conflict (Pet. 21) "in principle," none of the decisions cited by taxpayer suggests that the source of an organization's income and the nature of its expenses cannot be considered in assessing whether the organization's primary purpose is one meriting an exemption under the Internal Revenue Code. As the majority opinion in the Court of Appeals stated (Pet. App. 20):

> The destination test ought not to be used to permit an entity to escape taxation where, as here, so much of its revenues are devoted to expanding its commercial facilities and increasing its surpluses, and so little of its revenues are actually spent for social welfare activities, that it is factually clear that the primary purpose of the organization is not really the promotion of social welfare but the running of a commercial operation.

A strikingly similar case, not cited by taxpayer, was before the Court of Claims in *Scripture Press Foundation* v. *United States*, 285 F. 2d 800, certiorari denied, 368 U.S. 985. The taxpayer in that case was a nonprofit publishing corporation organized by individuals who had become concerned over the poor quality of teaching materials available for Bible instruction in Sunday schools. The organization's activities involved two phases; the publication and sale o religious literature, and the improvement of religious instruction and education through activities that

were separate from its sale efforts. Based on the factual situation presented, the Court concluded that the organization's primary purpose was the publication and sale of religious literature and the fact that a portion of the revenue produced by this activity was used to promote an exempt purpose did not entitle the entire organization to exemption from tax.

4. Taxpayer's forecast (Pet. 20) of "confusion and uncertainty" as a result of this decision is simply without foundation. The series of questions which taxpayer poses to illustrate this claim (Pet. 22-23) merely illustrate the fact that an exemption has only been granted to organizations whose primary purpose is exempt. In order to determine an organization's status courts must weigh the nature and extent of non-exempt activities against its exempt activities to determine its purpose. The extent of an organization's profit-making activity, the relationship between gross and net revenue, the commercially competitive nature of its activities, the size of its accumulated surplus are all factors that must be taken into account to determine the ultimate purpose. It was only after a careful consideration of these factors that the courts below concluded that taxpayer's primary purpose was the operation of a commercial resort.

## CONCLUSION

The primary purpose of taxpayer is a question of ultimate fact, and since two courts below have arrived at

the same factual conclusion, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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